XI-HC—78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 54 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL [redacted] NO. 54 OF 2003

APPELLANT — Shankar Ram Kushwaha, S/o. Motiram Kushwaha, aged about 38 years, R/o. Parri, P.S.H. – Surajpur, Dist. – Surguja (C.G.)

VERSUS

RESPONDENT — State of Chhattisgarh, through P.S.H. Officer Police Station – Surajpur, District – Surguja (C.G.)

Present:
Shri Shiv Kumar Uike, counsel for the appellant.
Shri Neeraj Mehta, P.L. for the State/respondent.

ORAL JUDGMENT
(16.08.2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 12th December 2002 passed in Special Sessions Case No. 35/02 whereby learned Special Court, Ambikapur, constituted under Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 convicted the appellant under Section 323 of the IPC and sentenced him to undergo rigorous imprisonment for a period of two days already undergone by him and pay a fine of Rs.1000/-, in default of payment of fine to undergo further R.I. of one month.

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2. The appellant was prosecuted under Section 294 of IPC read with Section 3(1)(10) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act and Sections 323 & 506 of the IPC. However, learned Special Court acquitted him of all the charges except charge under Section 323 of IPC and sentenced him as mentioned above.

3. Conviction of the appellant is based on the statement of PW-12 Devdhari, the complainant and PW-3 Rajesh Kushwaha. Complainant Devdhari was Sarpanch of Gram Panchayat Parri whereas the appellant was Panchayat Sachiv. Allegations against the appellant are that he called Sarpanch in the Panchayat, asked him to put his thumb impression on certain papers and on his refusal he abused the complainant in the name of his caste, threatened him to murder him and beat him, whereupon the complainant lodged a report and he was sent for medical examination.

4. Defence of the appellant before the Court below was that the incident has occurred in the presence of Ashok Choubey and Mohd. Harun and at the time of incident in fact witness Rajesh had snatched the papers from the accused and he had assaulted the accused by fists and in the scuffle between the accused and Rajesh, the complainant, Ashok and Harun had intervened and in that process the complainant sustained injuries as he smashed against the door. All these suggestions have been denied by the complainant though he has admitted that accused sent Ashok

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Choubey and Harum to call him whereupon he came to the accused. He has also admitted that report of the incident was lodged by him and Rajesh jointly in the police station. He has also admitted that in the report of Ex.P/4 he did not mention that the accused threatened him to kill.

5. PW-3 Rajesh Kushwaha has also stated that the accused asked the complainant to sign the voucher as money was to be paid to Ashok Coubey, which was refused by the complainant whereupon the accused abused the complainant in the name of his caste and beat him by hands & fists and thereafter, the accused also beat him and tried to snatch the papers from him. Similar are the suggestions given to this witness that in fact he tried to assault the accused and the complainant as also Harun and Ashok Choubey intervened, as a result of which the complainant sustained some injuries. He has admitted that report of Ex.D/1 was drafted by him and he has also signed the report of Ex.D/1 though he has stated that the said report was drafted as per instructions of the complainant.

6. The accused in his statement under Section 313 of the Cr.P.C. has denied the material appearing against him and pleaded innocence and false implication. He has stated that he has been implicated in the crime due to old animosity. He examined Ashok Choubey as defence witness No. 1. This witness has stated that on the date of incident at about 12.00 noon witness Rajesh and complainant were sitting together, he asked for his payment,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

whereupon the complainant told him to call the Sachiv i.e. the appellant and they will see it in the Panchayat Bhawan. Thereafter, he along with Sachiv went to Panchayat Bhawan, at that time the Sarpanch was not present in the Panchayat Bhawan, he went to the Cycle Stores of Rajesh to call Sarpanch and from there he came to Panchayat Bhawan along with Sarpanch, Rajesh and Harun. Panchayat Sachiv requested the Sarpanch to sign various papers, whereupon Rajesh Kushwaha said that they shall take the file and show it to some other person outside, which was objected to by the appellant and the appellant said that the file can be checked only in the office and he will not permit the file to be taken outside. However, Rajesh forcibly snatched the papers from the appellant and thereafter, Rajesh and the appellant were engaged in the scuffle. At that time Sarpanch himself and Harun had intervened.

7. From perusal of statements of PW-2 Devdhari, PW-3 Rajesh Kushwaha as also the defence witness Ashok Choubey it appears that there was a scuffle between the parties. The complainant and his witness Rajesh have made allegations against the appellant that he gave fist blows to the complainant whereas the accused and his defence witness have stated that in fact the scuffle took place between the accused and witness Rajesh and in the said scuffle when the complainant tried to intervene, he sustained some injuries. In the light of contradictory statements of the witnesses examined from both the sides, it is very difficult to reach to a

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	definite conclusion as to which of the parties is stating the truth. However, taking into consideration the complaint of Ex.D/1, which is signed by the complainant as also witness Rajesh, in which allegations have been made against the appellant that he assaulted both of them, it appears that the true facts have been deliberately withheld by the respective parties. From perusal of paragraph – 14 of the judgment it appears that some statement was also recorded by the Sub Divisional Magistrate of witness Ashok Choubey and Mohd. Harun, in which they had stated that in fact the scuffle was between Rajesh and the appellant and complainant sustained injuries while he was trying to separate the two. 8. Thus, in the light of rival claims of both the parties, the trial Court was not justified in reaching to the conclusion by placing explicit reliance on the statements of the complainant and his witness Rajesh, ignoring the statement of the defence witness. 9. In the result, the appeal succeeds. Conviction of the appellant under Section 323 of the IPC and sentence passed thereon, are set aside. He is acquitted of the above charge. **Sd/-** **Dhirendra Mishra** **Judge**	